



Child Support Act 1995

1995 CHAPTER 34

Application for a departure direction

1 Applications for departure directions

(1) In the 1991 Act, insert after section 28—

“Departure from usual rules for determining maintenance assessments

28A Application for a departure direction

- (1) Where a maintenance assessment (“the current assessment”) is in force—
 - (a) the person with care, or absent parent, with respect to whom it was made, or
 - (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned,may apply to the Secretary of State for a direction under section 28F (a “departure direction”).
- (2) An application for a departure direction shall state in writing the grounds on which it is made and shall, in particular, state whether it is based on—
 - (a) the effect of the current assessment; or
 - (b) a material change in the circumstances of the case since the current assessment was made.
- (3) In other respects, an application for a departure direction shall be made in such manner as may be prescribed.
- (4) An application may be made under this section even though—
 - (a) an application for a review has been made under section 17 or 18 with respect to the current assessment; or
 - (b) a child support officer is conducting a review of the current assessment under section 16 or 19.

Status: This is the original version (as it was originally enacted).

- (5) If the Secretary of State considers it appropriate to do so, he may by regulations provide for the question whether a change of circumstances is material to be determined in accordance with the regulations.
- (6) Schedule 4A has effect in relation to departure directions.”
- (2) Schedule 1 inserts in the 1991 Act a new Schedule 4A which makes supplemental provision with respect to procedural and other matters.

2 Preliminary consideration

In the 1991 Act, insert after section 28A—

“28B Preliminary consideration of applications

- (1) Where an application for a departure direction has been duly made to the Secretary of State, he may give the application a preliminary consideration.
- (2) Where the Secretary of State does so he may, on completing the preliminary consideration, reject the application if it appears to him—
 - (a) that there are no grounds on which a departure direction could be given in response to the application; or
 - (b) that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28F(4).
- (3) In subsection (2)—
 - “the current amount” means the amount of the child support maintenance fixed by the current assessment; and
 - “the revised amount” means the amount of child support maintenance which, but for subsection (2)(b), would be fixed if a fresh maintenance assessment were to be made as a result of a departure direction allowing the departure applied for.
- (4) Before completing any preliminary consideration, the Secretary of State may refer the current assessment to a child support officer for it to be reviewed as if an application for a review had been made under section 17 or 18.
- (5) A review initiated by a reference under subsection (4) shall be conducted as if subsection (4) of section 17, or (as the case may be) subsection (8) of section 18, were omitted.
- (6) Where, as a result of a review of the current assessment under section 16, 17, 18 or 19 (including a review initiated by a reference under subsection (4)), a fresh maintenance assessment is made, the Secretary of State—
 - (a) shall notify the applicant and such other persons as may be prescribed that the fresh maintenance assessment has been made; and
 - (b) may direct that the application is to lapse unless, before the end of such period as may be prescribed, the applicant notifies the Secretary of State that he wishes it to stand.”

3 Imposition of a regular payments condition

In the 1991 Act, insert after section 28B—

“28C Imposition of a regular payments condition

- (1) Where an application for a departure direction is made by an absent parent, the Secretary of State may impose on him one of the conditions mentioned in subsection (2) (“a regular payments condition”).
- (2) The conditions are that—
 - (a) the applicant must make the payments of child support maintenance fixed by the current assessment;
 - (b) the applicant must make such reduced payments of child support maintenance as may be determined in accordance with regulations made by the Secretary of State.
- (3) Where the Secretary of State imposes a regular payments condition, he shall give written notice to the absent parent and person with care concerned of the imposition of the condition and of the effect of failure to comply with it.
- (4) A regular payments condition shall cease to have effect on the failure or determination of the application.
- (5) For the purposes of subsection (4), an application for a departure direction fails if—
 - (a) it lapses or is withdrawn; or
 - (b) the Secretary of State rejects it on completing a preliminary consideration under section 28B.
- (6) Where an absent parent has failed to comply with a regular payments condition—
 - (a) the Secretary of State may refuse to consider the application; and
 - (b) in prescribed circumstances the application shall lapse.
- (7) The question whether an absent parent has failed to comply with a regular payments condition shall be determined by the Secretary of State.
- (8) Where the Secretary of State determines that an absent parent has failed to comply with a regular payments condition he shall give that parent, and the person with care concerned, written notice of his decision.”

4 Determination of applications

In the 1991 Act, insert after section 28C—

“28D Determination of applications

- (1) Where an application for a departure direction has not failed, the Secretary of State shall—
 - (a) determine the application in accordance with the relevant provisions of, or made under, this Act; or
 - (b) refer the application to a child support appeal tribunal for the tribunal to determine it in accordance with those provisions.

Status: This is the original version (as it was originally enacted).

- (2) For the purposes of subsection (1), an application for a departure direction has failed if—
- (a) it has lapsed or been withdrawn; or
 - (b) the Secretary of State has rejected it on completing a preliminary consideration under section 28B.
- (3) In dealing with an application for a departure direction which has been referred to it under subsection (1)(b), a child support appeal tribunal shall have the same powers, and be subject to the same duties, as would the Secretary of State if he were dealing with the application.”

5 Matters to be taken into account

In the 1991 Act, insert after section 28D—

“28E Matters to be taken into account

- (1) In determining any application for a departure direction, the Secretary of State shall have regard both to the general principles set out in subsection (2) and to such other considerations as may be prescribed.
- (2) The general principles are that—
- (a) parents should be responsible for maintaining their children whenever they can afford to do so;
 - (b) where a parent has more than one child, his obligation to maintain any one of them should be no less of an obligation than his obligation to maintain any other of them.
- (3) In determining any application for a departure direction, the Secretary of State shall take into account any representations made to him—
- (a) by the person with care or absent parent concerned; or
 - (b) where the application for the current assessment was made under section 7, by either of them or the child concerned.
- (4) In determining any application for a departure direction, no account shall be taken of the fact that—
- (a) any part of the income of the person with care concerned is, or would be if a departure direction were made, derived from any benefit; or
 - (b) some or all of any child support maintenance might be taken into account in any manner in relation to any entitlement to benefit.
- (5) In this section “benefit” has such meaning as may be prescribed.”

6 Departure directions

(1) In the 1991 Act, insert after section 28E—

“28F Departure directions

- (1) The Secretary of State may give a departure direction if—

- (a) he is satisfied that the case is one which falls within one or more of the cases set out in Part I of Schedule 4B or in regulations made under that Part; and
 - (b) it is his opinion that, in all the circumstances of the case, it would be just and equitable to give a departure direction.
 - (2) In considering whether it would be just and equitable in any case to give a departure direction, the Secretary of State shall have regard, in particular, to—
 - (a) the financial circumstances of the absent parent concerned,
 - (b) the financial circumstances of the person with care concerned, and
 - (c) the welfare of any child likely to be affected by the direction.
 - (3) The Secretary of State may by regulations make provision—
 - (a) for factors which are to be taken into account in determining whether it would be just and equitable to give a departure direction in any case;
 - (b) for factors which are not to be taken into account in determining such a question.
 - (4) The Secretary of State shall not give a departure direction if he is satisfied that the difference between the current amount and the revised amount is less than an amount to be calculated in accordance with regulations made by the Secretary of State for the purposes of this subsection and section 28B(2).
 - (5) In subsection (4)—
 - “the current amount” means the amount of the child support maintenance fixed by the current assessment, and
 - “the revised amount” means the amount of child support maintenance which would be fixed if a fresh maintenance assessment were to be made as a result of the departure direction which the Secretary of State would give in response to the application but for subsection (4).
 - (6) A departure direction shall—
 - (a) require a child support officer to make one or more fresh maintenance assessments; and
 - (b) specify the basis on which the amount of child support maintenance is to be fixed by any assessment made in consequence of the direction.
 - (7) In giving a departure direction, the Secretary of State shall comply with the provisions of regulations made under Part II of Schedule 4B.
 - (8) Before the end of such period as may be prescribed, the Secretary of State shall notify the applicant for a departure direction, and such other persons as may be prescribed—
 - (a) of his decision in relation to the application, and
 - (b) of the reasons for his decision.”
- (2) Schedule 2 inserts in the 1991 Act the new Schedule 4B which is referred to in subsections (1)(a) and (7) of the new section 28F inserted by this section.

7 Effect and duration

In the 1991 Act, insert after section 28F—

“28G Effect and duration of departure directions

- (1) Where a departure direction is given, it shall be the duty of the child support officer to whom the case is referred to comply with the direction as soon as is reasonably practicable.
- (2) A departure direction may be given so as to have effect—
 - (a) for a specified period; or
 - (b) until the occurrence of a specified event.
- (3) The Secretary of State may by regulations make provision for the cancellation of a departure direction in prescribed circumstances.
- (4) The Secretary of State may by regulations make provision as to when a departure direction is to take effect.
- (5) Regulations under subsection (4) may provide for a departure direction to have effect from a date earlier than that on which the direction is given.”

8 Appeals

In the 1991 Act, insert after section 28G—

“28H Appeals in relation to applications for departure directions

- (1) Any qualifying person who is aggrieved by any decision of the Secretary of State on an application for a departure direction may appeal to a child support appeal tribunal against that decision.
- (2) In subsection (1), “qualifying person” means—
 - (a) the person with care, or absent parent, with respect to whom the current assessment was made, or
 - (b) where the application for the current assessment was made under section 7, either of those persons or the child concerned.
- (3) Except with leave of the chairman of a child support appeal tribunal, no appeal under this section shall be brought after the end of the period of 28 days beginning with the date on which notification was given of the decision in question.
- (4) On an appeal under this section, the tribunal shall—
 - (a) consider the matter—
 - (i) as if it were exercising the powers of the Secretary of State in relation to the application in question; and
 - (ii) as if it were subject to the duties imposed on him in relation to that application;
 - (b) have regard to any representations made to it by the Secretary of State; and
 - (c) confirm the decision or replace it with such decision as the tribunal considers appropriate.”

9 Transitional provisions

In the 1991 Act, insert after section 28H—

“28I Transitional provisions

- (1) In the case of an application for a departure direction relating to a maintenance assessment which was made before the coming into force of section 28A, the period within which the application must be made shall be such period as may be prescribed.
- (2) The Secretary of State may by regulations make provision for applications for departure directions to be dealt with according to an order determined in accordance with the regulations.
- (3) The regulations may, for example, provide for—
 - (a) applications relating to prescribed descriptions of maintenance assessment, or
 - (b) prescribed descriptions of application,to be dealt with before applications relating to other prescribed descriptions of assessment or (as the case may be) other prescribed descriptions of application.
- (4) The Secretary of State may by regulations make provision—
 - (a) enabling applications for departure directions made before the coming into force of section 28A to be considered even though that section is not in force;
 - (b) for the determination of any such application as if section 28A and the other provisions of this Act relating to departure directions were in force; and
 - (c) as to the effect of any departure direction given before the coming into force of section 28A.
- (5) Regulations under section 28G(4) may not provide for a departure direction to have effect from a date earlier than that on which that section came into force.”